

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.15244 of 1998

Date: 23-07-2007

Between:

The Management,
Executive Engineer,
Drainage Division, Bhimavaram

Petitioner

And

Sri N. Ramachandram and others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.15244 of 1998

ORDER:

1. This writ petition is instituted by the Executive Engineer, Drainage Division of the Irrigation and Command Area Development Department of the State Government. He calls in question the correctness of the Award passed by the Labour Court, Guntur in I.D.No.616 of 1991 which came to be instituted by the respondents herein.

2. The reference made for adjudication of Labour Court is whether the Executive Engineer, Drainage Sub-Division, Bhimavaram and the Deputy Executive Engineer, Sub-Division are justified in terminating the services of the N.M.R. workers who are the unofficial respondents herein. The workmen have got their service particulars marked as Ex.W.1, whereas the management has marked 9 documents as exhibits. The Labour Court, on a correct analysis of the entire evidence that was marshalled before it, had arrived at a finding of fact that the workmen before it had put in continuous service of more than 240 days in the preceding 12 months period of their termination. It is admitted that the retrenchment compensation as contemplated by Section 25-F of the Industrial Disputes Act, 1947 (for short 'the I.D. Act) has not been paid at the time of retrenchment of the workmen. They were only issued a month's notice before the actual retrenchment. Therefore, the Tribunal had returned a finding that their termination amounts to retrenchment and since it has not been passed in due compliance of the requirement of Section 25-F of the I.D. Act, the retrenchment has got to be declared as

bad in law. Therefore, the Labour Court ordered reinstatement of the workmen before it, except the second respondent herein, with continuity of service and back wages.

3. I have heard the learned Government Pleader for Irrigation and Sri M.Vijay Kumar, the learned counsel for the unofficial respondents-workmen.

4. Before, I proceed further in the matter, I must record a memo filed on behalf of the respondents in this court in paragraphs 2 thereof, it has been averred as follows:

“This Writ Petition is filed by the petitioners challenging the orders in I.D.616/91 dated 29-08-97 as the same is contrary to law and the directions given by the Hon’ble Supreme Court of India. By virtue of Interim Orders we have already drawn the half of the back wages granted by the Labour Court, Guntur that were deposited by the petitioners and we are all working in the department on NMR basis as on today. We submit that we are willing to give up up to 50% of the back wages granted by the Labour Court in the impugned award.”

5. The learned Government Pleader for Irrigation contends that the drainage division of the irrigation department does not answer the description of an ‘industry’ as is found in Section 2-J of the I.D. Act and therefore, the Labour Court had lacked the very jurisdiction to entertain their reference. This contention of the learned Government Pleader cannot be countenanced for two reasons viz. (1) except taking such a plea in the counter affidavit filed before the Labour Court, the petitioner herein has not taken any steps or measures by leading evidence before the Labour Court to enable it return a finding on the issue as to whether the Drainage Division of the Irrigation Department of the Government of Andhra Pradesh can be declared an ‘industry’ or not. Therefore, for the sheer failure to marshal evidence before the Labour Court, it is improper

for this Court to be called upon to examine such an issue in abstract terms whether the Drainage Division of the Irrigation Department of the Government of Andhra Pradesh answers the description of an 'industry' or not, particularly from the stand point of view of that notwithstanding the deployment of a large manpower and equipment for the purpose of maintaining the drainage systems of the department does not render it an industry. Such a question is a mixed question of fact and law. In the absence of any factual data, it will not be proper for this court to venture upon to examine this issue in detail. (2) There is also yet another

reason why this issue should not be considered at this length of time.

6. A Constitution Bench of the Supreme Court in **Bangalore Water Supply and Sewerage Board Vs. A Rajappa**, ^[1] held that any wing of the Government can also answer the description of an 'industry' for the purpose of conferring the benefits upon the workmen therein.

7. Long years later, when an attempt has been made as to whether the Postal Department is an 'industry' at all or not, the Supreme Court pointed out in **General Manager, Telecom Vs. A.Srinivasa Rao and**

others ^[2] as under:

A two-judge Bench of this Court in Theyyam Joseph case held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an "industry" within the definition of Section 2 (j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-judge Bench decision in Bangalore Water Supply. In a later two – judge Bench decision in Bombay Telephone Canteen Employees, Assn. Case this decision was followed for taking the view that the Telephone Nigam is not an "industry". Reliance was placed in Theyyam Joseph case for that view. However, in Bombay Telephone Canteen Employees Assn. Case (i.e. the latter decision), we find a reference to the Bangalore Water Supply case. After

referring to the decision in Bangalore Water Supply it was observed that if the doctrine enunciated in Bangalore Water Supply is strictly applied, the consequence is "catastrophic". With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven judge Bench decision Bangalore Water Supply Case by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back- nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply Case. We must, therefore, add that the decisions in Theyyam Joseph and Bombay Telephone Canteen Employees' Assn. cannot be treated as laying down the correct law."

8. Therefore, for these reasons, the question raised as to whether the Drainage Division is an 'industry' or not cannot be allowed to be agitated in this writ petition for the first time. Even otherwise, it is not in dispute that the respondents in this writ petition are all rendering manual work for the purpose of maintaining the drainage works/systems. When once they applied themselves manually to the job, it will not be possible to hold that they do not answer the description of workmen. For these reasons, I do not find any merit in the writ petition and it deserves to be dismissed. However, as already noted supra, the respondents have given up their claim to the balance 50% of the back wages, which gesture on their part is well appreciated. Therefore, except modifying the Award with regard to the back wages to the extent of 50% already paid, the writ petition deserves to be dismissed. In terms set out supra, the writ petition is dismissed. No order as to costs.

NOOTY RAMAMOHANA RAO,J

23-07-2007
Stp

[\[1\]](#) AIR 1978 SC 548

[\[2\]](#) (1997) 8 SCC 767